

This is a transcription of episode 7 of Season Two of In the Dark. Italics indicate audio. Musical notations and other production elements aren't included. Because there may be imprecisions in the transcript, the audio should be considered the official record of the episode.

Episode 7: The Trials

Previously on In the Dark.

Randy Stewart: It was a jigsaw puzzle. They throw the pieces in and they fit. The ones that don't believe it, didn't pay attention to the evidence.

TV news archive: Curtis Flowers was sentenced to death on four counts of capital murder. That conviction actually marked the sixth time Flowers had been tried in the case.

David McGee: If you try a man, and you go six times for the same crime, well, something is wrong about the Constitution or something wrong about the law or something is wrong about the entire system.

One afternoon last summer, our producer Natalie and I decided to drive out to an old abandoned store in Money, Mississippi, called Bryant's Grocery. It's about a 50-minute drive from Winona.

When Natalie and I first drove by the store, we didn't even see it, and we had to turn back around.

Madeleine Baran: Oh, it's right there, we just passed it.

It was easy to miss.

Madeleine Baran: That's Bryant's Grocery.

The building that was once Bryant's Grocery is falling apart. The windows are boarded up, and the roof is gone.

Madeleine Baran: It's like covered with vines. Even the warning sign is covered with vines. All you can see is, 'Violators will be prosecuted.' Looks like it really is about to fall over.

We walked over to a historical marker. It was on a post.

Madeleine Baran: So it says Bryant's Grocery. It's this marker in like gold letters.

Bryant's Grocery is the place where in the summer of 1955, a black 14-year-old boy named Emmett Till stopped in to buy some candy. He didn't realize the danger he was in.

Emmett Till was from Chicago, and he was just down in Mississippi visiting relatives. He'd taken the train down south and actually gotten off at the station in Winona right on Front Street across the street from Tardy Furniture. It was the station closest to where his relatives lived.

In the store that day in 1955, the white woman working at the register, Carolyn Bryant, sold the candy to Emmett Till. Carolyn Bryant would later claim that Emmett Till had flirted with her when he was inside the store, that he'd put his hands on her waist, and that she just felt unsafe around him.

A few days later, in the middle of the night, Carolyn Bryant's husband Roy Bryant and another man, J.W. Milam, kidnapped Emmett Till from his great-uncle's house and beat him and shot him in the head. Then they dumped his body in Tallahatchie River, where it was found three days later. He was unrecognizable except for a silver ring he was wearing, which had been his father's.

Emmett Till's mother, Mamie Till, insisted on having an open casket, so that everyone could see what had been done to her son. Jet magazine published the photos. And the sight of Emmett Till's body was so startling that it shook people into action in a way that earlier lynchings and killings of black people had not.

Natalie and I walked around to the other side of the marker.

Madeleine Baran: So these are all like—.

Natalie Jablonski: Well look. There was something here and it's been kind of scraped off.

Madeleine Baran: Oh wow.

Natalie Jablonski: Like this was, there were photos, and—.

Madeleine Baran: You're right.

Natalie Jablonski: It looks like more detail about what happened. And they did, they scraped off most of it.

Madeleine Baran: Yeah, it's almost all gone. Just like the black paint underneath.

Someone had defaced the marker.

But then other people had come by and taped up notes on loose leaf paper over the scraped off sections.

Someone had sketched a drawing of Emmett Till wearing a dress shirt and tie.

Madeleine Baran: It almost seems like kids wrote this.

Natalie Jablonski: Yeah, like high school students or something.

I later found out that these notes had been written by teenagers. A busload of students from St. Louis who were on a civil rights tour of the South had visited the site just before we got there. And left these notes.

Madeleine Baran: Look at this one. It says, 'You can kill a boy. You can destroy a marker, but you can't get rid of the idea of freedom.'

The men who killed Emmett Till were arrested, and the case went to trial before an all-white jury. Emmett Till's mother, Mamie Till, was there for the trial. She later talked about this in an interview.

Mamie Till-Mobley: When I saw the antics that were going on in the courtroom, I could tell that everything was against us. And when the jury retired to render their verdict, I noticed that the black people who were lining the walls in the backs of the room, they were quietly leaving the courtroom. And I knew then that they knew we were not going to get a guilty verdict.

The all-white jury was out for just 68 minutes. They voted not guilty, and the two men were free to go.

And they stayed free — even after they confessed to the murders in a paid interview with a magazine a few months later. Many years later, Carolyn Bryant, the woman who'd accused Emmett Till, told a historian that she'd actually made up the story about what had happened inside Bryant's Grocery.

It's been sixty-three years since that all white-jury voted to acquit the men who killed Emmett Till.

But that image of an all-white jury in a courtroom has remained incredibly powerful because when juries are all-white, especially in places that are not entirely white, it causes people to question the fairness of the justice system.

In the case of Curtis Flowers, in every single trial, the juries were either all white or mostly white — this in a state that is almost 40 percent black.

And the reason for this is that that's how the prosecutor, Doug Evans, wanted it.

This is Season Two of *In the Dark*, an investigative podcast by APM Reports. I'm Madeleine Baran. This season is about the case of Curtis Flowers, a black man from a small town in Mississippi who's spent the past 21 years fighting for his life — and a white prosecutor who's spent that same time trying just as hard to execute him.

Curtis Flowers has been tried six times. That means that seventy-two jurors have sat in judgment of him. Almost all of them were white.

And to understand how that happened — how the juries in the Curtis Flowers case got so white — you have to know a little bit about how jury selection works.

Jury selection has basically two rounds. In the first round, the judge cuts anyone from the jury pool who clearly cannot be impartial.

But in the second round, it works a little differently.

In this second round, both sides are given a certain number of what are called peremptory strikes. And the lawyers can use them to get rid of whichever potential jurors they want. They don't stop and explain to the judge why they're striking someone. They just strike them.

But if it looks to the defense like the prosecutor is striking a lot of black people from the jury, the defense can call a timeout and challenge those strikes. It's called raising a Batson challenge.

And then the judge can ask the prosecutor for his reasons for striking those black potential jurors. And pretty much any reason is fine, but one reason they're not allowed to use is race. The prosecutor is not allowed to strike a black person because they're black.

It's actually illegal. It violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

But it's rare that a judge actually finds this because the standard to prove a Batson violation is incredibly difficult to meet.

It's not enough for a judge to simply find that a prosecutor has used all of their strikes on black people. What a Batson violation means is that the prosecutor deliberately excluded black people because of their race.

In Curtis Flowers' first trial, in 1997, Curtis' lawyers watched as prosecutor Doug Evans struck one black person after another from the jury pool.

And Curtis' lawyers called a timeout. They said Doug Evans is striking black jurors because they're black. But the judge in that first trial refused to consider their motion. The judge let Doug Evans strike those jurors. And the jury in Curtis' first trial ended up being all white. Curtis Flowers was convicted and sentenced to death.

Curtis appealed and he won because the Mississippi Supreme Court found that Doug Evans had engaged in prosecutorial misconduct. The Court found that Evans asked improper questions not in good faith. And so the Court reversed Curtis' conviction.

At Curtis' second trial, again, Doug Evans tried to strike every black person who could have served on the jury. And again, Curtis' lawyers called a timeout. But this time, something

remarkable happened. The judge, Clarence Morgan, actually found that Doug Evans intentionally struck a black potential juror because of his race. In the transcript of that second trial, you can see how the D.A. Doug Evans got caught.

Judge Morgan focused in on one black man in particular Doug Evans had struck.

Doug Evans told the judge he did not strike the man because he was black. Evans said he struck the man because he was sleeping during part of jury selection and because he'd heard through a quote, "confidential informant," that the man was a member of a gang.

But Judge Morgan said he'd also been watching the man during jury selection and *he* never saw him sleeping.

And about that gang claim — Curtis' lawyer told the judge if Doug Evans is going to say something like that, he should prove it. Let's have a hearing. Curtis' defense had done their own research. And they'd found no evidence of this man being in a gang, no evidence of him having any criminal record whatsoever.

And then, a few minutes after the defense called for that hearing, Doug Evans told the judge he had something he wanted to clear up. He said that an investigator had just double checked the part about the man being in a gang, and it turned out — that was wrong. The man actually was not in a gang.

The judge ruled that Doug Evans' reasons for striking this potential juror were just pretexts. And that the real reason that Doug Evans had struck him was because he was black. And so the judge removed the strike from that man, and he ended up on the jury. He was the only black person on the jury for that second trial.

This jury of eleven white people and one black person convicted Curtis Flowers and sentenced him to death. But again, Curtis appealed and he won — because again, the Mississippi Supreme Court found that the D.A. Doug Evans had engaged in prosecutorial misconduct. The Court found that Evans repeatedly argued facts not in evidence. And so again, the Court reversed Curtis' conviction.

And Doug Evans decided to try the case again — for a third time.

In that third trial, Curtis Flowers had a new lawyer — a public defender named Ray Charles Carter.

Madeleine Baran: Good to see you.

Ray Charles Carter: All right. Good to see you.

Madeleine Baran: How's your morning going?

Ray Charles Carter: Everything's going good, can't complain.

One day last September, I went to Jackson, Mississippi with our producer Rehman to talk with Ray Charles Carter at his office. Carter is 62. He has grayish white hair. He was wearing a blue polo shirt and jeans.

Ray Charles Carter has been a lawyer for 33 years. He's no longer Curtis' lawyer, but he was for a long time.

We sat down to talk, and Ray Charles Carter told me what he thought when he first heard about the case of Curtis Flowers.

Ray Charles Carter: I remember saying I feel sorry for whoever winds up with this case. I thank God I don't have to be bothered with it.

Madeleine Baran: Why?

Ray Charles Carter: Why? Because, um, he was accused of killing four people. There were four deaths, and I knew emotions and hostility probably surround this case, probably were great.

A few years after that, Ray Charles Carter got a job as an attorney in the state capital defender's office. The office is a specialized team that only works on death penalty cases. And one day, Carter's supervisor came by with a file, and he dropped it on his desk. It was the file for the Curtis Flowers case. And Ray Charles Carter was told — this is your case now.

By this point, Curtis Flowers had already been convicted and sentenced to death twice — in two separate trials. Ray Charles Carter's job was to represent Curtis Flowers in the third trial, to try to convince this third jury to vote not guilty.

Carter went to meet with his new client.

Ray Charles Carter: Obviously you know with the claim that he killed four people you think that you're going run into some kind of monster, awful guy or hard core, and then you meet him. And with Curtis, he's very nice, kind, and actually funny. In fact, I don't know if I've ever had one quite like Curtis.

Ray Charles Carter also went to Curtis' previous lawyer's office and picked up the boxes of transcripts and discovery materials — everything that had accumulated over the course of the first two trials.

Ray Charles Carter: And it was a lot, so I basically closed my door and cut myself off from the rest of the office and stayed in there and read it, and just subjected as much to memory as I could, made notes.

Ray Charles Carter read all of this, and he talked with the rest of Curtis's new defense team about what had happened in Curtis' first two trials — the prosecutorial misconduct, Doug Evans' getting called out by the judge on a Batson violation.

And after learning of all this, Curtis' defense team decided that Doug Evans needed to go — that he shouldn't be allowed to stay on the case.

And so, one of the first things that Curtis' new defense team did — before the third trial had even started — was to file a motion with the judge, asking the judge to remove Doug Evans as the prosecutor trying the case.

The judge, Clarence Morgan, dealt with the defense's request by asking one question of Doug Evans.

Judge Morgan said, quote, "Mr. Evans, do you know of any reason you ought to be disqualified now?"

Evans replied, "Not that I'm aware of, Your Honor."

Judge Morgan said, "Based on that statement, the motion is overruled."

And D.A. Doug Evans stayed on the case.

Court opened for Curtis Flowers' third trial in February of 2004.

And Curtis' lawyer, Ray Charles Carter, watched as Doug Evans used every single strike he had — all 15 of them — against black people. Doug Evans didn't strike a single white person.

Ray Charles Carter: Wasn't no doubt that he was trying to get rid of all the black folks. That's exactly what he's trying to do.

Ray Charles Carter and the rest of Curtis' defense team objected. They called a timeout. They filed a Batson challenge. They tried to convince the judge that Evans was intentionally discriminating against black people, but it didn't work. The judge sided with Doug Evans.

And the jury ended up being made up of 11 white people and one black person. And that one black person had only made it onto the jury after Doug Evans had run out of strikes.

Ray Charles Carter: I tell people I felt like I was back fifty years in time. And, I joked one time that I felt I was so far back that I started looking for Frederick Douglass to talk to him and ask him what he'd do in these old times. But of course, that was just a joke.

Madeleine Baran: I wonder how it felt as a black man to go into, as you're describing, to go back fifty years, be in this courtroom.

Ray Charles Carter: I got to tell you, I grew up in a place, Winston County, Mississippi. Everybody that I knew that went to the courthouse, black folks, something bad happened to 'em. They were either going to the court and they were being convicted or they were being sentenced to some amount of time. Kind of always bad. I never remember any

black folks going up there and having good things happen to 'em. And the courthouse was the place I never ever wanted to go. And I could remember saying, 'When I grow up, I'm gonna do something. I'm gonna stop this kind of stuff, do something to help stop it. I'm never gonna accept this as the way it has to be because it's clearly wrong.'

And so, in the courtroom in Curtis Flowers' third trial, Ray Charles Carter was ready to fight for Curtis Flowers, ready to convince this nearly all-white jury to find his black client not guilty.

Ray Charles Carter: I'm probably confident or maybe even arrogant enough to believe that I can overcome whatever I'm faced with. But in Curtis' case, I guess I just didn't want to believe that I didn't have a chance, even though I probably didn't in those cases. Where there was just one black person on the jury.

Throughout the trial, Ray Charles Carter challenged the testimony of the state's witnesses. He pointed out contradictions and inconsistencies. He urged the jurors to pay attention to the holes in the state's case.

But it didn't work. The jury voted to convict Curtis Flowers and sentence him to death.

Curtis Flowers appealed to the Mississippi Supreme Court. It was the third time the Court had heard an appeal in the Flowers case. The state supreme court had already reversed the convictions twice — after the first trial and after the second one.

This time, the third time, the Court took a closer look at the reasons that Doug Evans had given for striking certain black members of the jury pool.

And those reasons — the Mississippi Supreme Court didn't believe any of them.

For example, Doug Evans had said that one of the black people he'd struck, a woman named Connie Pittman, had said on the stand that she did not believe that Curtis Flowers killed the people at Tardy Furniture. And if she had said that, that would be an excellent reason for striking her from the jury.

But it turned out, Connie Pittman never said that. When the Mississippi Supreme Court reviewed the record from the trial, they saw that Connie Pittman was asked in jury selection whether she had an opinion about whether Curtis Flowers was guilty, and she said no.

Then there was a potential juror named Vicki Curry. Doug Evans said that one of the reasons he struck her was because she had said she couldn't vote for the death penalty.

But when the Mississippi Supreme Court looked at this reason, it fell apart right away, because on her jury questionnaire, when Vicki Curry had been asked if she could impose the death penalty, she wrote, yes. The Mississippi Supreme Court wrote that this reason and another one Evans had offered for striking her, quote, "appear to be outright fabrications."

In summing up the case, the Mississippi Supreme Court wrote that it was on its face as strong a case of racial discrimination as the Court had ever seen in the context of a Batson challenge.

The Court found the case showed, quote, "an effort by the state to exclude African-Americans from jury service."

And because of that, the Mississippi Supreme Court reversed Curtis Flowers' conviction.

I talked to one of the justices of the Mississippi Supreme Court who voted to overturn it. His name is Oliver Diaz. He's since left the court.

Oliver Diaz: The courts tend to grant a lot of leeway to prosecutors. But in this case, in the Flowers case, when it came before us, it was pretty blatant. And the Supreme Court looked at that and said, 'You know, we're not going to allow this. You violated Mr.

Flowers' rights to a fair trial by striking all of the African-Americans from this jury pool.'
Madeleine Baran: Interestingly in Winona, the way that people who think Curtis is guilty look at this is that it's not the prosecutor who's doing anything wrong. It's Curtis' defense are coming up, and Mississippi Supreme Court, with these like technicalities, these irritating things that are meaningless to just delay justice.

Oliver Diaz: Well a constitutional violation is never a technicality. I mean that's a significant infringement on the right of not only the defendant but on society as a whole. I mean especially in a case, in this specific case, you've had prosecutorial misconduct raised several times, and it's been the grounds for reversal several times. I mean the prosecutor in this case has done a terrible job in trying this case, and it's been reversed because of that. You know I find it strange that the community doesn't see that when the Court has clearly stated that this prosecutor has made many, many mistakes. It's not the defendant's fault. He's not putting himself on trial.

I asked Oliver Diaz if Doug Evans had been punished in any way after that third trial for excluding black people from the jury in violation of the U.S. Constitution. Diaz told me no.

Oliver Diaz: There's generally not a sanction that's applied. I mean the sanction is the reversal of the case. Nobody wants to have to retry a case. I mean the community has to foot the bill for a lot of these trials and reversals. And if a mistake is made, it's very costly, especially in a death penalty case.

Diaz told me the only other way that a prosecutor could face any kind of punishment for misconduct at trial would be if someone filed a complaint with the Mississippi Bar Association. And then the bar could decide to sanction the attorney or even disbar him. The general counsel at the Mississippi Bar Association told us that because of the Bar's rules, he can't tell us whether anyone had filed a complaint against Doug Evans, but he said Evans had never been publicly sanctioned.

Over the past year, we've spent a lot of time trying to talk to the jurors who served on the Flowers trials. There were 72 jurors who sat in judgment of Curtis across those six trials, and 61 of them were white and 11 of them were black. And as we talked to the white jurors about how they saw the case, certain themes emerged.

The white jurors that we talked to — they trusted law enforcement. They believed what the D.A. Doug Evans told them. This is Patricia Ann Tierce from the fourth trial.

Patricia Ann Tierce: The prosecutor did a good job. He really did. I don't think he could have done, anybody else could have done a better job. And his investigator did a good job.

Samara Freemark: John Johnson?

Patricia Ann Tierce: Uh huh. But yes, he did a good job. He's very professional.

And this is Larry Blaylock from the sixth trial.

Larry Wayne Blaylock: you know, I knew the district attorney. I knew John Johnson, I knew him and good friends with him you know? I was friends with all of them basically.

And they tended to trust the state's witnesses, especially, interestingly enough, the black witnesses. It was like the white jurors believed that the black witnesses were especially credible because they were black. This is Gay Evaldi from the third trial.

Gay Evaldi: I wish I could remember what some black woman said on the stand, but I was really kind of surprised. She was on the stand and kinda said that as far as she was concerned, he was guilty. But there were a lot of blacks that said what they saw and you know it kind of helped tell you that he was guilty.

One of Curtis' earlier lawyers told me his take on this was that the white jurors seemed to believe that black people almost never testify against another black person because they thought that black people stick together. And so, when a black witness took the stand for the state, these white jurors thought it was admirable, even brave. This is Susan Cottingham from the third trial.

Susan Cottingham: There was one, she came in there and she looked him right square in the eyes. That girl, she was convincing.

And there was something else, too. Many of these white jurors really did not like Curtis' lawyers. This is Susan Cottingham again. She's talking about Ray Charles Carter.

Susan Cottingham: I didn't like any of them. I did not like any of them especially the tall black man. That man was just insane. I don't know what his problem was.

And to a person, these white jurors were certain. They were absolutely positive that Curtis Flowers was guilty.

Barron Davis: He's dead guilty. He ought to be dead. When they bury him, come see me. I'll wear this same suit.

Edith Fikes: The evidence was pretty convincing that he was the guilty person.

Larry Wood: For my part, he was guilty, and there was no doubt.

It wasn't as though some black jurors didn't also think Curtis Flowers was guilty. Among the eleven black people who sat in judgment of Curtis Flowers over the years, it was split nearly fifty-fifty. Six of the black jurors voted not guilty and five voted guilty.

But the greatest predictor of which way a juror would go in the case of Curtis Flowers came down to whether that juror was white. Because in the Curtis Flowers case, every single white juror — all 61 of them — has voted to convict. Not a single white juror ever found Curtis not guilty.

And most of Curtis's juries have been either all white, or eleven white, one black.

The most diverse jury he ever faced was in the fourth trial, in 2008. It had seven white people and five black people.

And it didn't get this way because Doug Evans decided to stop striking black people off the jury. Every single strike Doug Evans used was against a black person, but there were just more black people in the jury pool this time.

So going into the fourth trial, Curtis's lawyers were feeling more optimistic.

This jury of seven white people and five black people deliberated much longer than any of the earlier ones. And eventually, they told the judge that they could not agree on a verdict. They were split seven to five in favor of guilt — seven guilty, five not guilty — in a jury of seven whites and five blacks. The split was along racial lines. Every white juror voted guilty. Every black juror voted not guilty.

TV News coverage: Reporter: Judge Clarence Morgan of Kosciusko declared the mistrial after the jury of seven whites and five blacks told him it was hopelessly deadlocked. The defendant is black, but three of the four people he is accused of killing are white. The jury had deliberated an afternoon and a morning and came back from lunch telling the judge it was still deadlocked.

The fourth trial was over, and this time, there was no verdict. It ended in a mistrial.

By this point, the case had been going on for more than a decade. There'd been four trials. And Doug Evans had not been able to get a conviction to stick. Newspapers ran stories about how much the trials were costing taxpayers. And a lot of white people in Winona were getting frustrated by how long it was taking to convict Curtis Flowers. And this was particularly hard on the families of the people who'd been murdered at the store.

I talked to several of these family members, including a man named Benny Rigby. His wife, Carmen, was killed at the store. He told me sitting through one trial was hard enough.

Benny Rigby: You don't want to sit there and listen time after time about where the bullet entered and where it exited, and brain matter on the wall and stuff like that. It takes a lot out of you, it really does, through the years.

And Benny Rigby told me there was something else he found frustrating about what he saw in the courtroom. He told me that after seeing that hung jury in that fourth trial, it was clear to him that this was becoming a race thing.

Benny Rigby: You can take an all-white jury and a white man kills a black man. You can bring them to trial and if the evidence is there the white jury is going to convict that white man. They're not going to look at race. But you can bring an all-black jury in, where a black man has killed a white woman or something like that. Those black people, the biggest majority of them, they're going to hang the jury. It's just a difference. I mean we've seen it in these trials. I just wish people would forget about color, forget about race. Look at the evidence, look at the law and go from there, you know? And I'm going to tell you something, we have some good—and I'm not saying it's because they voted guilty—but we had some good blacks on the jury. I mean that was on there to do what was right, and regardless of the color. And it was hard for some of them to do what they did.

Madeleine Baran: So when you look at the trials that have more black jurors. Why do you think black jurors would find him not guilty?

Benny Rigby: Because he's black.

Benny Rigby wasn't the only person who felt this way. A lot of white people in town talked to me about the trials this way.

And all of this came to a head at the fifth trial in 2008. Tensions were high. People were frustrated. It seemed like everyone was angry. And by the end of it, one man — a juror — would be hauled out in handcuffs.

That's after the break.

(BREAK)

By the time of the fifth trial, Curtis Flowers had already been locked up for eleven years, but Curtis' lawyer back then, Ray Charles Carter, told me that going into the fifth trial, Curtis was still hopeful about his chances.

Ray Charles Carter: And Curtis' thinking was, these folks have been trying to execute me for all these years and they have failed. They have not succeeded.

This time, in trial five, Curtis' lawyers tried something else, a kind of last ditch effort to stop Doug Evans from trying to strike all the black people off the jury. They figured Doug Evans can't strike black people if he doesn't have any strikes. And so they filed a Hail Mary motion. They asked the judge to take away all of Doug Evans' peremptory strikes.

The defense wrote, quote, "Restricting his use of those strikes in the upcoming trial is the only way to prevent his continued willful violation of the Fourteenth Amendment rights not only of the defendant, but of the community as a whole, and the consequent undermining of the justice system that inevitably occurs when such invidious discrimination occurs."

The judge who was deciding this motion was a new judge on the Flowers case. His name was Joey Loper. One of the first things I did when I started looking into Judge Loper was to look at his Facebook page. And I learned that one of Judge Loper's Facebook friends is the D.A. Doug Evans.

Judge Loper heard the defense's motion, their request to take away Doug Evans' strikes, and Judge Loper overruled it. He sided with the D.A., and Doug Evans kept his strikes.

And then, jury selection began. And once again, the D.A. Doug Evans started striking black people off the jury. The jury that Curtis ended up with was made up of nine white people and three black people.

We talked to a number of the jurors on that trial, including this man, Orman Knox. He was one of the three black jurors. And he was also the foreperson.

Orman Knox: It was the fifth trial, for God's sake! Most people just was like, 'Can we get it over with?'

Madeleine Baran: Or like why are we still here?

Orman Knox: Yes.

Orman Knox was one of the few people in Winona who didn't already know a lot about the Flowers case, because at the time of the murders Orman Knox had been in the Navy. He was living out of state.

Another one of the black jurors was a man named James Bibbs. James Bibbs had been a teacher in the public schools for decades. By the time of the trial, he was sixty-six and had retired.

I went to visit James Bibbs one evening at his house on Bibbs Road. James Bibbs told me that he treated being called for jury duty in the fifth trial of Curtis Flowers as just doing his civic duty.

James Bibbs: I wasn't really didn't think nothing, you know. It was just, you know, I'm going here, you know, if I'm selected, I just go in here and do my best and you know, every which way it go, you know, that's it. Whether if he's found guilty, he's found guilty, if he's found innocent, he's found innocent.

James Bibbs saw things differently than a lot of the other jurors over the years. He told me that as he watched the D.A. Doug Evans put on his case, he was struck by how unconvincing it was.

How little physical evidence there was.

James Bibbs: They never found any fingerprints in the car, you know, that he supposedly broke into. Cash register, they didn't find any fingerprints there.

How strange the story was of that guy Doyle Simpson claiming that his gun had been stolen.

James Bibbs: Better chance of him being it than Flowers, you know, because it was his gun, you know? And he done lied about where he got the gun from.

How questionable the testimony of the prison informant, Odell Hallmon, was.

James Bibbs: Just another convict, you know. He's gonna say what, whatever that, you know, that was gonna benefit him, you know.

How the whole case seemed thin.

James Bibbs: And I didn't see enough evidence, you know, to convict him of it, you know. I didn't say he didn't do it, but I'm saying that I didn't see the evidence that they presented was enough to convict him on.

And so, when James Bibbs went into the jury room to deliberate, and they took a poll, Bibbs voted not guilty. Two other people voted not guilty. The jury was split — three not guilty and nine guilty.

Out in the courtroom, everyone was waiting to hear what the jury would decide. Maybe, finally, this would be the trial that would end it. Maybe this jury would reach a verdict one way or another and the verdict would stick and these trials would finally be over. Everyone was waiting for that verdict.

But inside the jury room, the jurors were having a hard time. One of the problems was they could hardly keep straight what was said in the courtroom at trial and what they'd already known

about the case before they were picked to be on the jury. Because this was the fifth trial and this trial was being held in Winona where the murders happened.

And the jury foreperson, Orman Knox, told me it was a real challenge to rein in all this extra information that kept flying around the jury room.

Orman Knox: And we just said, 'Listen.' (sighs) If it wasn't discussed in the courtroom, 'You can't discuss anything.' And in our deliberation, we caught ourselves every time. 'Well what if? What about the so and so?' 'Uh, we didn't talk about that in the courtroom.' 'Oh, yeah.' And that was the other hard part. That was the other hard part 'cause I know eleven people have read, have their own perceptions, all this stuff. And I'm the only one that's really operating from the dark, so I had to constantly remind.

Orman Knox even sent a note to the judge about this. The note said that one of the jurors had said something about the investigation that hadn't been mentioned in the trial.

Curtis' lawyers tried to use this note to get the judge to declare a mistrial, but the prosecutor, Doug Evans, argued that the jurors should keep deliberating. He said quote, "As everybody knows, everyone on this jury knew everything about the case before they were ever picked."

Judge Loper agreed. He told the jury to just ignore what that juror said and keep talking.

And so, the deliberations continued. Hours passed. People started to wonder what was going on in there in that jury room.

We talked to one of the white jurors. Her name is Burnadette Braswell, and she said it wasn't easy being in that room.

Burnadette Braswell: And we cried. And I prayed a lot. And we tried to do what we thought was the decision that God would have us to make.

Inside that room, some of those three jurors who had been not guilty votes before, were now starting to change their minds. At some point, James Bibbs told me, they took another poll.

James Bibbs: Well, the second time, it was eleven to one.

Madeleine Baran: So, you were the one at that point?

James Bibbs: Right.

Madeleine Baran: Wow, so what did that feel like, to find out like where are my other two people?

James Bibbs: (laughs) Nah, I, you know, it wasn't a big thing.

By six o'clock that night, the jury still hadn't reached a verdict. And Judge Loper sent them back to their hotel. The next morning, the deliberations continued. James Bibbs was still the only one voting not guilty. And he wasn't about to change his mind.

James Bibbs: That's all I can say, you know, is that I did what I was, you know, was hired to do, was go in there and give my opinion. And that's all I could do, you know, if it was what they wanted, it was not what they wanted, you know, but I was just being truthful about it. That's all I could do.

Hours passed. Still no verdict. Around noon on that second day, the judge got a note from one of the white jurors. It was about James Bibbs — this holdout for not guilty.

The note said that James Bibbs had been talking in the jury room about how he'd been downtown near Tardy Furniture on the day of the murders. And according to this note, Bibbs had told his fellow jurors that he hadn't see any cops canvassing the area and that he believed that evidence had been planted.

Judge Loper read the note and again, he told the jurors to just ignore anything that wasn't said at the trial and keep deliberating.

Burnadette Braswell said they kept trying to convince James Bibbs, but they weren't getting anywhere.

Burnadette Braswell: We voted I don't know how many times, but the one that holdout that they're not guilty was not gonna change their mind.

Then at 7:35 p.m., the jury knocked. They told the judge they were deadlocked, they couldn't agree on a verdict. Ladies and gentlemen, Judge Loper said, I will declare a mistrial.

The families of the victims of the murders at Tardy Furniture could hardly believe it. They'd sat through this entire trial. It was the fifth one, and it still wasn't over.

Ray Charles Carter was standing next to Curtis when the mistrial was declared.

Ray Charles Carter: When they came in and said it was deadlocked, obviously we were relieved and felt like it was some kind of a victory, at least it's not guilty. And I know we'll get another chance and hopefully we can do a better job the next time. Fix whatever problems we had that particular time.

And then Judge Loper told the jurors, "Thank you for your service. You're free to go. Except for you, Mr. Bibbs."

James Bibbs: And then it's just a hung jury and then everybody go home, except me.

Judge Loper called James Bibbs up to the front. The courtroom was still full of people. And Judge Loper was not happy with James Bibbs — this holdout for not guilty in the fifth Flowers trial.

Judge Loper wanted to talk to James Bibbs about that note from earlier in the deliberations — the one that claimed James Bibbs was bringing outside information into the jury room. Judge Loper hadn't seemed to be that concerned about the note at the time, but now he was furious about it.

Judge Loper asked James Bibbs if he'd told the jurors that evidence had been planted at Tardy Furniture. Bibbs said no. He didn't know what the judge was talking about. He told the judge the only thing he'd mentioned to the jurors was that he was in the alley on the morning of the murders and didn't see anyone.

Jurors aren't supposed to tell other jurors about something that hasn't been mentioned in court, but it's not a crime. And to hear Orman Knox talk about it, almost everyone in the Flowers jury was doing it anyway.

But Judge Loper was only getting started.

Judge Loper accused James Bibbs of lying under oath in jury selection. He said Bibbs had been asked whether he had knowledge of the case, and Bibbs had said under oath that he did not. And therefore, Judge Loper said, James Bibbs had lied. He'd committed perjury.

And this was a serious allegation for Judge Loper to make. Perjury is a felony, so you can actually face prison time for it.

Judge Loper was insistent on this. He told Bibbs, quote, "I could have the court reporter right now read what was said by you, so don't stand there and lie to me."

If the court reporter had done that, if Judge Loper had actually checked the transcript before accusing James Bibbs of a crime, it would've been clear right then that what Judge Loper was saying wasn't true.

In jury selection, no one had even asked James Bibbs if he had any personal knowledge of the case or whether he had been downtown that day. And so, it was not possible for James Bibbs to have lied about it.

But in the courtroom that night, everything was happening quickly. Judge Loper was angry. And Bibbs was up there by himself. He didn't have a lawyer with him.

A TV news camera was filming this, and so we have audio of what it sounded like. The quality is pretty terrible.

WLBT archive:

Judge Joey Loper: Now is there any reason why you felt compelled to perjure yourself before this court last week?

James Bibbs: I wasn't intending to do that judge.

Judge Joey Loper: I'm going to let the grand jury of this county decide whether you committed perjury because in my eyes, you have committed perjury.

Judge Loper asked Bibbs, quote, "Now is there any reason why you felt compelled to perjure yourself before this court last week?"

James Bibbs replied, "I wasn't intending to do that judge."

Judge Loper told Bibbs, quote, "I'm going to let the grand jury of this county decide whether you committed perjury because in my eyes, you have committed perjury."

Curtis' lawyer, Ray Charles Carter, was watching all this from just a few feet away, watching the judge berate James Bibbs, this sixty-six year-old retired school teacher.

Ray Charles Carter: And I felt like Mr. Bibbs was being blamed for there not being a guilty verdict. I actually feared I might say something like, 'Judge, you're not letting him talk.' I gotta be real honest about what I was thinking about at the time. I was thinking of my grandfather being abused by some powerful person. That's what was going through my mind, and he couldn't protect himself from that person or from a system that was hostile towards him. And the more I watched that the madder it made me. That was flashing through my mind at the time.

And Ray Charles Carter started to feel like he just needed to get out of there — like he couldn't take it anymore. And so he turned around and started walking out of the courtroom. And Judge Loper shouted.

WLBT Archive

Judge Joey Loper: Mr. Carter! You have a seat, Mr. Carter! You have not been released! I don't know who you think you are to just storm out of this court, but I'll tell you, this court is still in session and you're gonna sit here.

Ray Charles Carter: The bailiffs did kind of grab me. I would say they did it kind of benignly and kindly, but they kind of grabbed me and led me back in there and made me you know take a seat, and I had to sit there.

Ray Charles Carter sat back down.

And then Judge Loper told James Bibbs, quote, "You are free to go. In handcuffs." James Bibbs the juror was under arrest.

James Bibbs: He just told me that, you know, I was under arrest, you know, and they had the police come over and put the handcuffs on me and take me to jail, you know.
Madeleine Baran: Right there from the courtroom?

James Bibbs: Right. And the police handcuffed me and taked me on away, so that was it.

Madeleine Baran: Wow.

James Bibbs: Yeah.

James Bibbs was hauled out of the courtroom, and he spent the night in jail. Judge Loper set his bond at twenty thousand dollars.

Madeleine Baran: What are you thinking during this?

James Bibbs: (laughs) You know, it was such a shock and a surprise. I don't know what to think at this time, you know. All I was thinking I knew that, you know, I hadn't done anything wrong, so I didn't really worry too much 'cause I know it wasn't true, you know. And I went on down to Vaiden and stayed the rest of the night and got out the next morning.

James Bibbs told me he had to pay a bail bondsman sixteen-hundred dollars to get out of jail.

And then, the D.A. Doug Evans got to decide whether to pursue charges against James Bibbs, this one man who hung the jury, this one man who disagreed with him — Doug Evans — in this high-profile death penalty case.

One week later, Doug Evans brought the case before a grand jury. And the grand jury indicted James Bibbs on charges of perjury. Bibbs was facing the possibility of ten years in prison.

James Bibbs got a lawyer — a man named Rob McDuff. And just a note here, APM Reports separately hired Rob McDuff to represent us in trying to get public records in Mississippi.

Rob McDuff: The D.A. who obtained an indictment against him, had been prosecuting Curtis Flowers, was extremely frustrated that he couldn't get a conviction in the fifth trial, and clearly he had an ax to grind. He should have never been involved.

Rob McDuff tried to get Doug Evans removed from trying the case against Bibbs.

Rob McDuff: We moved to disqualify Doug Evans, the prosecutor, from prosecuting Mr. Bibbs. We were going to call him as a witness to say, 'Did you ask Mr. Bibbs these questions that you claim he lied about?'

Madeleine Baran: Right.

Rob McDuff: And he'd have to say no. We'd say, 'Where in the transcript did you do it?' He would have to say no. He realized he was going to be a witness, so he did not oppose that motion.

After Doug Evans recused himself, the Attorney General of Mississippi took over the case. Months passed. Finally, nearly a year after James Bibbs had been arrested, the Attorney General dropped the charges.

Rob McDuff: And I think had anybody looked at this objectively, Mr. Bibbs never would have been indicted. The judge shouldn't have put him in jail, and he never should have been indicted. He never should have had to go through this process. Fortunately, the Mississippi Attorney General's Office, after they looked at the case and after we pointed out to them that Mr. Bibbs had never been asked the questions that they claimed he lied about, they realized that there was no case and they dropped it.

I tried to talk to Judge Loper about this, but he didn't respond. A woman from the Administrative Office of Courts called me to tell me that Judge Loper couldn't talk because the case could come back on appeal.

After the fifth trial ended in a hung jury, Doug Evans decided to try the case again for a sixth time, in 2010. This trial is the latest one.

The sixth trial of Curtis Flowers was presided over by the judge from trial five — Judge Loper.

And just like Doug Evans had in all the other Flowers trials, Evans struck nearly every black person off the jury. He used six strikes. Five of them were against black people. The jury ended up being 11 white people and one black person.

Ray Charles Carter told me that going into the sixth trial, Curtis Flowers was still feeling hopeful about his chances.

But Ray Charles Carter was not.

Ray Charles Carter: In that particular case, I did in trial six, question whether I had a chance at all after the jury got picked because the prosecutor was clearly trying to get rid of black folks again. But after we picked the jury, I was convinced that it was an uphill battle. I had no chance. And as time passed I became more convinced that I didn't have a chance.

By the end of the trial, as Ray Charles Carter was making his closing argument, he was convinced they were going to lose.

Ray Charles Carter: I mean I talked to 'em and I scan as I talk. I could tell they were rejecting me, disapproving of me.

Madeleine Baran: How could you tell?

Ray Charles Carter: I could just read their faces—

Madeleine Baran: What kind of faces?

Ray Charles Carter: Read the rejection, read the lack of affection. I mean you can feel when somebody seem to dislike you, have a distaste for you.

Madeleine Baran: So it wasn't subtle?

Ray Charles Carter: No, not to me. But I certainly knew by the time I did the closing argument that there were not going to listen to anything I had to say, but I did it anyway.

Madeleine Baran: How did you talk to Curtis about this, when you were sort of seeing, you know as someone who's tried a lot of cases, what you thought was going to happen?

Ray Charles Carter: Well, Curtis has a lot of faith and probably more than I do. And even when things look bad for me, and it looked like we're definitely going to have a bad outcome, Curtis always remained steadfast in his faith and always believed that somehow it's going to work itself out. And Curtis' thinking was, God is on my side. God is going to stay on my side.

The jury deliberated for just 29 minutes. They returned the verdict that Ray Charles Carter had expected. Guilty. And they sentenced Curtis Flowers to death.

Ray Charles Carter had defended Curtis in four trials. He'd seen his client get sentenced to death more than once. He'd seen a juror hauled out in handcuffs after voting not guilty. And he'd seen one black person after another struck from the jury.

Ray Charles Carter: All I ever wanted was him to get a fair trial. Get a fair trial and then we'll let, I can accept whatever happened, but I can't accept not being given a fair trial. I have a problem with that. That is wrong, and I can't do it.

Madeleine Baran: Do you think Curtis ever got a fair trial?

Ray Charles Carter: (long pause) I don't know, know that's a hard one to answer there. The two trials that got a hung jury, I would say were probably fairer than the others. I guess I would say no. If I had to give a yes or no, I'd have to say no.

Curtis Flowers had been tried six times for the murders at Tardy Furniture.

When I talked to Oliver Diaz, the former justice of the Mississippi Supreme Court, I wanted to know what he'd make of how many times Curtis had been tried. And Oliver Diaz's response to that wasn't at all what I was expecting.

Oliver Diaz: I think it shows that the system actually works. Ultimately, I think it speaks highly of the courts that the Court, regardless of the history of one particular case and how many times it's been reversed, if those errors continue to happen, the appellate courts will continue to reverse.

Oliver Diaz told me that the way he sees it, every time Curtis Flowers was convicted in an unfair trial, the Mississippi Supreme Court fixed the problem by reversing Flowers' conviction. And so, the system wasn't broken, because the Court recognized the problem and dealt with it.

But I reminded Oliver Diaz that even when Curtis Flowers won his appeal, he didn't get out of prison, because the prosecutor Doug Evans would just bring the case to trial again. And so, if Curtis loses his appeal, he's in prison. If Curtis wins his appeal, he's in prison.

Madeleine Baran: I mean for Curtis, there's not a whole lot of difference though, between winning and losing in this situation.

Oliver Diaz: Well you know, technically there is. He's not, you know, once it's reversed, he's not a convicted felon. He's just awaiting a new trial. While he is physically incarcerated, there is a great distinction.

Madeleine Baran: But I mean like the worst thing about being a convicted felon would be the prison part. So it's like he's still in prison regardless of his status. So it's like for him he can't ever actually win, it seems like.

Oliver Diaz: Yeah. For him personally, being incarcerated is a problem, but again, I mean, there's so many other horrible things that are attached to you once you are a convicted felon. You know, your rights are limited at that point.

Oliver Diaz was very fixated on this “technical” difference between Curtis Flowers the inmate in Parchman prison with a felony conviction on his record — and Curtis Flowers the inmate at Parchman with no felony conviction.

Oliver Diaz: There is a distinction. While in his specific physical situation may not change much, his status as a convicted felon versus his status as an incarcerated person awaiting trial, there is a big distinction.

Madeleine Baran: And so is it possible, that you could, that technically it's possible, that Curtis could keep being tried over and over again, like he could have ten trials, fifteen trials, twenty trials?

Oliver Diaz: I mean there is no limit. There's no hard and fast limit. But we have to have faith in our system. And I think, even as horrible as this case is, it shows us that there is, you know, there is hope that the system will look at a case and even when it's been reversed times before, the Court will look at it again and make sure that there was a fair trial.

Madeleine Baran: And why is it important to have faith in the system?

Oliver Diaz: I mean, that, we have to have faith in the system. If we don't have faith in the system, then, you know, we're not a society. We're not living by the rule of law. It's the, you know, rule of something other than the rule of law. We have to. If we don't have faith in the rule of law in this country, then, you know, we don't have faith in the country.

And so according to Oliver Diaz, a former Supreme Court Justice of the State of Mississippi, this is what it looks like when the system works.

But the way the system is set up, there's no one whose job it is to step in and say enough. These trials must stop.

Instead, every single time, every single trial, every single appeal, Curtis Flowers is the one who's sounding the alarm — pointing out, with his attorneys, that his trial wasn't fair.

And even when Curtis Flowers was successful, even when he did convince the court that

the D.A. Doug Evans had violated the U.S. Constitution, Doug Evans didn't get punished. He didn't have to pay a fine. He didn't lose his license to practice law. He didn't get removed from the case. There really were no consequences for Doug Evans.

The only thing that happened was that Doug Evans got another chance to try the case again. He got a do-over. And meanwhile, during all this time, Curtis Flowers was still locked up.

And so really, when you think about it, the only person being punished for the prosecutor's misconduct was Curtis Flowers, because Curtis Flowers was the one who had to sit in a cell in Parchman prison and wait for another trial — another trial where once again, most likely, the prosecutor would be Doug Evans.

It's like Curtis Flowers doesn't have a right to a *fair trial*. He just has the right to another one.

Next time on In the Dark.

Madeleine Baran: Hi, Mr. Evans?

Doug Evans: Can I help you?

Madeleine Baran: I'm Madeleine, this is Parker.

Doug Evans.

In the Dark is reported and produced by me, Madeleine Baran. Senior producer Samara Freemark, producer Natalie Jablonski, associate producer Rehman Tungekar, and reporters Parker Yesko and Will Craft.

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We have a lot more you can check out on our website — inthedarkpodcast.org. We have a quiz you can take to see how well you can do in picking out a Batson violation, using examples from real trials. And you can learn more about what happened in jury selection in Curtis' latest trial, the 6th one. Again, that's inthedarkpodcast.org.